Supreme Court, U. S.
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IN THE

Supreme Court of the United States

October Term, 1975

No. 75-90

GENERAL TELEPHONE COMPANY OF OHIO,

Petitioner,

v.

GENE SLAGLE, INC.,

and

THE PUBLIC UTILITIES COMMISSION OF OHIO,

Respondents.

BRIEF OF PETITIONER IN REPLY TO RESPONDENT GENE SLAGLE'S BRIEF IN OPPOSITION TO CERTIORARI

GEORGE E. SHERTZER
WALTER POND
One Stamford Forum
Stamford, Connecticut 06904

JOHN ROBERT JONES
ANDREW T. JONES
POWER, JONES & SCHNEIDER
100 East Broad Street
Columbus, Ohio 43215

Attorneys for Petitioner,
General Telephone Company of Ohio

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Respondent Slagle's argument that the federal question presented was not timely raised in the Court below is without merit. As we have pointed out in our petition, the decision of the Court below is unique and flies in the face of long-established law and precedent. It is also in conflict with previous decisions of the Court below specifically dealing with the effect of a reversal of a PUC rate order and thus considered controlling by the petitioner and the PUC. (App. 32a). In *Cincinnati & Suburban Bell Telephone Co.* v. *Public Utilities Comm'n*, 107 Ohio St. 370,

140 N.E. 86 (1923), the Court below said (App. 35a) that after reversal and remand to the PUC,

> "Such just and reasonable rate might or might not have been the rate theretofore in force, but the latter would not become the rate automatically. Both the utility and its patrons would have been entitled to have the judgment of the Public Utilities Commission upon that subject. . . ."

In *Keco Industries* v. *Cincinnati & Suburban Bell Telephone Co.*, 166 Ohio St. 254, 141 N.E.2d 465 (1957), the Court below held that where a rate increase order is found unreasonable on appeal, a subscriber is not entitled to a refund of such increased charges collected prior to the entry of a rate reduction order by the Commission on remand.

See also *City of Columbus* v. *Public Utilities Comm'n*, 170 Ohio St. 105, 163 N.E.2d 167 (1959), Syllabus by the Court, par. 4.

The federal constitutional issue did not arise until the Ohio Court's unanticipated refusal to follow generally accepted and long-established principles of public utility law and its own precedents and was raised by the petitioner at the first opportunity.

CONCLUSION

For the foregoing reasons and for the reasons set forth in the Petition, a Writ of Certiorari should issue.

Respectfully submitted,

GEORGE E. SHERTZER
WALTER POND
One Stamford Forum
Stamford, Connecticut 06904

JOHN ROBERT JONES
ANDREW T. JONES
POWER, JONES & SCHNEIDER
100 East Broad Street
Columbus, Ohio 43215

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